



INTERIOR BOARD OF INDIAN APPEALS

Christine Nix v. Acting Sacramento Area Director, Bureau of Indian Affairs

18 IBIA 387 (07/24/1990)

Related Board case:
21 IBIA 42



United States Department of the Interior

OFFICE OF HEARINGS AND APPEALS
INTERIOR BOARD OF INDIAN APPEALS
4015 WILSON BOULEVARD
ARLINGTON, VA 22203

CHRISTINE A. NIX

v.

ACTING SACRAMENTO AREA DIRECTOR, BUREAU OF INDIAN AFFAIRS

IBIA 90-46-A

Decided July 24, 1990

Appeal from a decision holding that a revocable land use permit had terminated by its own terms.

Affirmed in part; remanded in part.

1. Indians: Lands: Tribal Lands--Indians: Leases and Permits:
Generally

A revocable land use permit for tribal land terminates upon the death of the permittee when the permit so provides.

APPEARANCES: Christine A. Nix, pro se.

OPINION BY ADMINISTRATIVE JUDGE VOGT

Appellant Christine A. Nix seeks review of a December 14, 1989, decision of the Acting Sacramento Area Director, Bureau of Indian Affairs (Area Director; BIA), holding that a revocable land use permit for unallotted trust land on the Yurok Reservation had terminated by its own terms. For the reasons discussed below, the Board affirms the Area Director's decision in part and remands this case for further proceedings.

Background

Since 1963, the Area Director has exercised authority to manage allotted trust lands on the Yurok Reservation, formerly known as the Hoopa Extension Reservation, because of the lack of an organized tribal government. By letter dated December 13, 1963, the Assistant Secretary of the Interior authorized the Area Director to "issue revocable permits to conserve and prevent waste on the [reservation], to prevent the misuse of such lands, to regularize uses being made thereof, and to administer such lands for the best interests of all the Indians of [the reservation]." ^{1/}

^{1/} Section 2(e) of the Hoopa-Yurok Settlement Act of 1988, 25 U.S.C. § 1300i-1(e), provides: "The Secretary shall be responsible for the management of the unallotted trust land and assets of the Yurok Reservation until such time as the Yurok Tribe has been organized pursuant to [section 9 of the Act, 25 U.S.C.

Appellant is a non-Indian. On July 9, 1979, following the death of her Yurok husband, Leo Nix, Jr., she was issued Revocable Land Use Permit No. HRP-630 on behalf of her minor Yurok son, Leo Nix III, for a 1.97-acre parcel of unallotted trust land.

A prior permit for the property had been issued to Edith Hancorne, the aunt of Leo Nix, Jr., on October 15, 1971. On September 29, 1976, Hancorne signed a statement indicating that she wished to relinquish the property in favor of her nephew. In April 1979, Leo Nix, Jr., was approved for a grant under BIA's Housing Improvement Program. ^{2/} A house was under construction on the property at the time of his death in May 1979. In June 1979, appellant requested permission to remain on the property with her son. To support her request, she submitted statements from her husband's two daughters by his first wife, stating that they were relinquishing all claim to the house under construction on the property in favor of appellant's son.

On July 9, 1979, the Area Director approved appellant's request and granted her a land use permit on behalf of her son. Section 6 of the permit provides:

PERMITTEE'S RIGHTS. It is understood and agreed that this instrument is not a lease and is not to be taken or construed as granting any leasehold interest. This permit does not grant Permittee any vested interest in the property but is merely a permit to occupy or utilize the land described herein and will terminate upon Permittee's death and become subject to a new permit to another eligible individual as determined by the Secretary or as determined by the governing body of the Hoopa Extension Indians, if any, and approved by the Secretary. An eligible surviving spouse or other eligible member of the immediate family shall have first consideration for a new permit and may occupy the land until a new permit is made. If the surviving spouse is found to be ineligible to receive a permit in (His) (Her) own name, a permit may be issued to (Him) (Her) for the benefit of any surviving minor children who would be eligible through the deceased parent.

Leo Nix III died in 1988. By letter of January 27, 1989, Peter Nix, a brother of Leo Nix, Jr., asked the Superintendent to assign the land to him. By letter of April 21, 1989, the Superintendent notified appellant that her permit had terminated by its own terms.

fn. 1 (continued)

§ 1300i-8]. Thereafter, those lands and assets shall be administered as tribal trust land and the Yurok reservation governed by the Yurok Tribe as other reservations are governed by the tribes of those reservations." The Yurok Tribe has not yet been organized.

^{2/} Even though he was approved for a housing grant, Nix was never issued a land use permit. He had been sent a permit form to sign, but died before he returned it.

Appellant appealed to the Area Director, stating that she recognized that, as a non-Indian, she would not normally be entitled to a land assignment. She requested, however, that she be allowed to remain on the property until the Yurok Tribe organized and adopted a land use ordinance or until her husband's probate, in which a petition to reopen was pending, was finally concluded. ^{3/} She stated that her two step-daughters had consented to her use of the property until a new permit is issued. She attached a document, signed by one step-daughter, purporting to be an "unconditional inter-family lease" for the house on the property.

On December 14, 1989, the Area Director affirmed the Superintendent's decision, stating that appellant was ineligible to receive a tribal land assignment because she was a non-Indian. He noted that (1) the Yurok Tribe had not yet organized, and therefore BIA was responsible for enforcing compliance with existing revocable permits; (2) the reopening of the estate of Leo Nix, Jr., was irrelevant because the land use permit was not part of the estate; and (3) appellant's step-daughters had no authority to permit her to remain on the property. He concluded:

For the reasons stated herein and your ineligibility to receive a tribal land assignment because of your non-Indian status, we affirm the April 14, 1989 decision of the Superintendent * * * and request that you remove all personal property and vacate the premises within sixty (60) days of your receipt of this notice.

Appellant's notice of appeal from this decision was received by the Board on January 22, 1990. Only appellant filed a brief.

Discussion and Conclusions

Appellant's arguments before the Board are essentially the same as those she made before the Area Director. Additionally, she states that one of her step-daughters has recently applied for a land use permit for the property.

[1] Section 6 of appellant's permit explicitly provides that the permit terminates upon the death of the permittee. It is clear, therefore, that appellant's permit, issued on behalf of her minor son, terminated on the death of her son. Appellant appears to recognize this, although she seeks to remain on the property through some sort of undefined informal arrangement. None of her arguments, however, can alter the plain language of the permit.

The Board holds that the Area Director correctly found that appellant's permit terminated on the death of her son.

^{3/} The Superintendent filed a petition to reopen Leo Nix's estate on Feb. 28, 1989, in order to include an alleged natural daughter.

The Area Director's decision did not discuss the house located on the property. Section 7 of appellant's permit provides:

BUILDINGS: Ownership of any buildings placed upon the land will vest in Permittee or Permittee's heirs, it being hereby understood and agreed, however, that Permittee is in no way obligated to assist in building a house or otherwise improving the permitted property. Upon termination of this permit, Permittee or Permittee's heirs will be allowed ninety (90) days within which to remove or otherwise dispose of said buildings. This period of time may be extended by the Secretary at his discretion. If disposition is not made of the buildings within the allowable period, ownership of said buildings shall merge with the land and they may be assigned to a new Permittee as provided above.

This case must therefore be remanded to the Area Director for a determination concerning ownership of the house. When that determination has been made, the owner(s) will have a 90-day period in which to remove the house, if they wish to do so.

Therefore, pursuant to the authority delegated to the Board of Indian Appeals by the Secretary of the Interior, 43 CFR 4.1, the Acting Area Director's December 14, 1989, decision is affirmed in part and remanded for further proceedings as discussed in this opinion.

//original signed

Anita Vogt
Administrative Judge

I concur:

//original signed

Kathryn A. Lynn
Chief Administrative Judge